

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 24858 of 2006(H)

PETITIONER:

**R.SHAMSHAD,
W/O.MOHSIN, AGED 35 YEARS,
CLERK, P.H.M.K.M.H.S. SCHOOL,
PANAVOOR, ATTINGAL, THIRUVANANTHAPURAM DISTRICT.**

**BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENTS:

- 1. THE STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, THIRUVANANTHAPURAM-14.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
ATTINGAL, THIRUVANANTHAPURAM DISTRICT.**
- 4. THE MANAGER,
P.H.M.K.M.H.S. SCHOOL,
PANAVOOR, ATTINGAL, THIRUVANANTHAPURAM DISTRICT.**
- 5. SMT. ANJU S.S.,
SARADA VILASAM, ATTUKAL,
P.O.PANAYAMUTTOM, NEDUMANGAD,
THIRUVANANTHAPURAM DISTRICT.**

**BY ADV. SRI.M.A.THOMAS KUTTY
SMT.ASHA CHERIAN
SRI.D.KISHORE
GOVT.PLEADER SMT.M.R.SREELATHA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14/02/2007 ALONG WITH WPC NO. 26516 OF 2006 ,THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX IN W.P.C.NO.24858/06

PETITIONER'S EXHIBITS

- EXT.P1 TRUE COPY OF THE ORDER NO.B4/1826/2000/D.DIS DTD. 30-03-2000
OF THE DISTRICT EDUCATIONAL OFFICER.**
- EXT.P2 TRUE COPY OF THE ORDER NO.B4/3302/03/D.DIS DTD. 6-1-04 OF
DISTRICT EDUCATIONAL OFFICER.**
- EXT.P3 TRUE COPY OF THE APPLICATION DATED 3-12-02 OF R5**
- EXT.P4 TRUE COPY OF THE JUDGMENT IN W.P.C.NO.21841/03**
- EXT.P5 TRUE COPY OF THE ORDER DATED 13-11-03 OF THE MANAGER.**
- EXT.P6 TRUE COPY OF THE JUDGMENT IN W.P.C.NO.39571/03**
- EXT.P7 TRUE COPY OF THE G.O.(RT)NO.3313/2006/G.EDN. DTD. 31-07-06**
- EXT.P8 TRUE COPY OF THE G.O.(RT)NO.87/2006/G.EDN. DTD. 5-1-06**
- EXT.P9 TRUE COPY OF THE INCOME CERTIFICATE OF R5**
- EXT.P9(A) TRUE COPY OF THE PURCHASE CERTIFICATE OF R5**
- EXT.P9(B) TRUE COPY OF THE PURCHASE CERTIFICATE OF R5 DTD.12-9-06**
- EXT.P10 TRUE COPY OF THE DECISION REPORTED IN 2003(1)KLT SN 33**

RESPONDENT'S EXHIBITS

- EXT.R5(A) TRUE COPY OF THE APPLICATION SUBMITTED BY THE
PETITIONER IN THE PROPER FORM.**
- EXT.R5(B) TRUE COPY OF THE COMMUNICATION ISSUED BY R3 TO THE
PETITIONER.**
- EXT.R5(C) TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
RESPONDENT BEFORE R2**
- EXT.R5(D) TRUE COPY OF THE COMMUNICATION DTD. 17-6-03 OF R2.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).NOs.24858 & 26516 of 2006

Dated this the 14th day of February, 2007

JUDGMENT

The issue involved in these cases are connected. Hence they are disposed of through this common judgment.

By Ext.P1 petitioner in W.P.(C)No.24858/06 hereafter referred to as the petitioner was appointed in a leave vacancy from 14-02-2000 to 18-04-2000. By Ext.P2 petitioner came to be appointed against a regular vacancy of Clerk with effect from 02-06-2003. The fifth respondent preferred Ext.P3 petition stating that she is the daughter of Sri.C.Sasikumaran who was working as Headmaster in the school. She points out that her father died on 24-06-1997. It is also pointed out that on 17-06-99, her sister had filed an application and since her sister married, her claim may be considered. Ext.P3 is seen dated 03-12-2002. This court directed the manager to consider the matter. Pursuant to the said judgment,

Ext.P5 order is passed by the manager rejecting the claim of the fifth respondent. Two reasons were given. Firstly it is stated that the application was not submitted within two years of attaining majority. Secondly, it is stated that there is a 51A claimant namely the petitioner in W.P.(C)No.24858/06 who got approved service as evident from Ext.P1. Reliance is placed on the decision of this court in Deepthy Susan Jacob v. State of Kerala (1996(2)KLT 1033). Fifth respondent approached this court challenging the same and it culminated in Ext.P6 judgment. This court permitted the fifth respondent to file a revision before the Government under Rule 92 of Chapter XIV A impugning the appointment of the petitioner in W.P.(C)No.24858/06. Pursuant to the said judgment, Ext.P7 order is passed by the Government, by which approval of the appointment given to the petitioner by the DEO was cancelled with effect from the date of appointment of the petitioner as clerk. Fifth respondent was directed to file a revised application with all necessary documents stipulated in the

Government order before the Manager, if not already done. Ext.P8 is the order produced by the petitioner to show that the Government took a different stand. Ext.P9 is produced to show the properties of the fifth respondent. Ext.P10 is the judgment of the Division Bench of this court relied on by the petitioner. Petitioner in W.P.(C)No.26516/06 is the manager and referred to as the Manager. He also impugns the same order.

2. I heard learned counsel appearing for the parties.

3. It is contended by learned counsel Sri.V.A.Muhammed appearing on behalf of the petitioner that the Government has failed to take note of the dictum in **Deepthy Susan Jacob v. State of Kerala** (1996(2)KLT 1033). Petitioner is a Rule 51A claimant having regard to the approval as evident from Ext.P1 order and Rule 51A claimant will prevail over rule 51B claimant, he contends. He would further submit that there is no application given by the fifth respondent as contemplated in law. He refers me to Rule 51B to point out that application must be in the form

prescribed as per the Government order. He emphasises Ext.P8 order of the Government wherein Government takes a stand in accordance with law. Further he would submit that the Government order referred to in Rule 51B insists upon a ceiling limit of Rs.150,000 as the income from all the sources including income from property. He points out the properties standing in the name of the fifth respondent. He would point out that fifth respondent was married and her husband is a business man and therefore she is not entitled and this aspect was not considered by the Government.

4. Per contra, learned counsel for the fifth respondent would contend that there is absolutely no basis for the claim based on Rule 51A. He would contend that the right under Rule 51A could not be pressed into service for the reason that fifth respondent's father died in the year 1997 and the appointment of the petitioner was in the year 2000. If only the petitioner was appointed prior to the death of the father of the fifth respondent, he

would have become a Rule 51A claimant, he contends and his claim would have prevailed over the right acquired upon the death of the fifth respondent father in the year 1997. He would further point out the decision of this court in **Baiju Kumar v. DEO, Trivandrum** (2003(3)KLT 240), wherein this court has taken the view that manager knows who are the dependants of the deceased employee and he is duty bound to inform the dependants and thereafter follow the procedure under Rule 51A. He would point out that this has not been done and if this has been done, petitioner would not have secured appointment in the year 2000. He reminds this court that petitioner is none other than the wife of the manager.

5. Sri.V.A.Muhammed also points out the decision of this court in **Remya.R.Chandran v. D.E.O., Mavelikkara** (2005(1) KLT 702) wherein this court taken the view that the right which must be determined with reference to the first of the year and the fifth respondent become major on 16-05-2000 and

therefore she is ineligible to be appointed to the vacancy which arose on 14-02-2000 and she become eligible only on 01-01-2001.

6. To this, the answer of the learned counsel for the fifth respondent is that the application filed by the sister of the fifth respondent was pending and therefore there is no basis to grant appointment to the petitioner. Thus the appointment of the petitioner was effected by the manager only to raise a claim, contends learned counsel for the fifth respondent and also the learned Government Pleader. It is pointed out that first application of the fifth respondent was on 15-01-2002, but the application in the prescribed form was on 03-12-2002.

7. It is to be noted that the claim of the fifth respondent was rejected by the manager vide Ext.P5. Two reasons are given. Firstly it is stated that application was filed belatedly as the application should have been submitted within two years of attaining majority. The other reason given is that there is a Rule 51A claimant. This is in respect of the application dated

3-12-2002. This was challenged. This court considered the matter in regard to the reasoning in Ext.P5 that application is belated. It is found that it is per se bad and application which the fifth respondent had submitted on 03-12-2002 could not be said to be belated. This view is reiterated in para 5. Therefore, the first reason for rejecting the application of the fifth respondent cannot hold good. Then the only reason given for rejecting the application is that Rule 51 A will prevail over Rule 51B. The contention of the learned counsel for the petitioner is that financial limit mentioned in the Government order is not observed and the petitioner is married and that her husband is a business man do not appeal to me at all. The manager when he is considering the claim under Rule 51B is a statutory authority. He cannot be permitted to raise new reasons not stated in the order. It is not stated in Ext.P5 order that the application is rejected on the ground that the financial limit is not fulfilled. Therefore, I reject the argument of the learned counsel for the petitioner and the Manager that the

financial limit indicated in the Government order is not satisfied. The application dated 03-12-2002 is not rejected on any other ground except the ground that claim under Rule 51A will prevail over Rule 51B. In regard to this aspect, the first question to be considered is whether the counsel for the fourth respondent is correct in contending that in view of the date on which her father died and the date on which petitioner is appointed, there can be no Rule 51A claim in favour of the petitioner. This is not a case where petitioner was appointed prior to the date of the death of the fifth respondent's father in 1997. The appointment against the leave vacancy is on 14-02-2000, nearly three years thereafter. I am of the view that having regard to the fact that fifth respondent's father died in the year 1997, fifth respondent had a claim under Rule 51B to the next arising vacancy. Had it been a case where there was a person having a rule 51A claim prior to the death of the employee, certainly the principle in **Deepthy Susan Jacob v. State of Kerala** (1996(2)KLT 1033) would apply and Rule 51A would

prevail over Rule 51B. But the question then arises is what is the effect of the actual facts in this case. This is a case where the fifth respondent's sister made an application and that application was ultimately given up. Admittedly, the fifth respondent was not qualified as on 01-01-2000 as she was a minor when the vacancy was filled up by appointing the petitioner on 14-02-2000. The fifth respondent would become major only in the year 2001. Sister abandoned the claim in 2001 only. But vacancy was filled up by appointing the petitioner on 14-02-2000. A perusal of Ext.P6 judgment would show that this court had held as follows:

“ Whatever that be, I have already found that the first reason mentioned in Ext.P6 for rejecting the application submitted by the petitioner on the ground of limitation is bad. The question as to whether it was with the deliberate objective of denying the petitioner of her claim of compassionate employment that the appointment during the period from 14-02-2000 till 18-4-2000 was given to the fourth respondent and the further

aspect whether the manager was bound to inform the petitioner and the other dependants of her late father of the vacancy which arose on 14-02-2000 are all aspects which should be gone into afresh. The period for preferring statutory appeals against Ext.P6 is already over. Still, in the circumstances of this case I permit the petitioner to file a revision before the Government under Rule 92 of Chapter XIV A impugning the appointment given to the fourth respondent. In the revision the manager as well as the fourth respondent should also be arrayed as respondents. If such a revision is filed by the writ petitioner within one month from today, the Government will hear the writ petitioner, the 3rd respondent-manager, the 4th respondent and the concerned official respondents and take a decision on the revision petition in the light of all relevant materials including the binding judicial precedents which may be cited before the Government by the writ petitioner, the 3rd respondent-manager and the 4th respondent. It is made clear that I have not expressed any opinion regarding the merits of the rival

contentions. The approval presently granted to the appointment given to the 4th respondent will be subject to the result of the above revision petition.”

8. It is pursuant to the same that Ext.P7 is passed. As long as Ext.P1 approval stands, petitioner would become Rule 51A claimant. The claim of the fifth respondent would have been on the basis of superior claim she had as already indicated on the basis of the death of the father in 1997. As long as Ext.P1 is allowed to stand, the contention based on Rule 51A by the petitioner may have to be considered. It is not clear from the order whether the approval of appointment as evident from Ext.P1 is set aside. In fact it is clear from Ext.P7 order that fifth respondent is entitled to approval from 01-06-2003. No doubt learned counsel for the fifth respondent would point out that there is discussion in Ext.P7 about the appointment in the year 2000. There is reference to the manger concealing facts before the educational authorities while declaring that there is no Rule 51A claimant or Rule 51B claimant awaiting

appointment. It is further stated that DEO should not have given approval to the appointment on 06-01-2004 as he is aware that petitioner had already made a claim for appointment under Rule 51B. But I find that Ext.P1 is not actually interfered with as such. As already indicated as long as Ext.P1 is allowed to stand it may be open to the petitioner to contend that she has become a Rule 51A claimant and in view of the law declared by this court when there is conflict between Rule 51A and Rule 51B, Rule 51A will prevail. In fact, in Ext.P5 also the only reason for rejecting the claim of the fifth respondent is that there is 51A claimant. Therefore, this was the aspect which should have been specifically dealt with. I do not think that this aspect has been dealt with as such.

9. In such circumstances, Ext.P7 cannot be sustained. Accordingly, writ petitions are allowed. Ext.P7 in both the cases are quashed.

10. In view of the urgency expressed by the fifth

respondent, petitioners in both the cases and the fifth respondent will be present either personally or through representative before the first respondent on 28/02/2007 at 11:00 a.m. and the first respondent will consider and take a decision in accordance with law within a period of one month thereafter. It is not necessary for the first respondent to issue notice to the parties.

Writ petitions are allowed.

**K.M.JOSEPH
JUDGE**

sv.

